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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------------|---------------------|------------------|
| 10/608,204 | 06/27/2003 | Roberto J. Bayardo JR. | END920030039US1 | 7637 |
| 23550 7590 01/06/2009 HOFFMAN WARNICK LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207 | | | | |
| EXAMINER MITCHELL, JASON D | | | | |
| ART UNIT 2193 | | PAPER NUMBER | | |
| NOTIFICATION DATE 01/06/2009 | | DELIVERY MODE ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/608,204

Applicant(s)

BAYARDO ET AL.

Examiner

Jason Mitchell

Art Unit

2193

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 10-12, 14-17, 19, 23, 24, 32, 33, 36 and 37.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193

Continuation of 11. does NOT place the application in condition for allowance because: The amendment to claims 10, 23 and 32 is sufficient to overcome the previous 101 rejection which is consequently withdrawn

The applicants argue that Verbeke's does not teach:

"a code pattern classifier for analyzing source code generated on a sharing node in the network to identify a set of code patterns"

Verbeke par. [0180]-[0181] states in part

"establish a set of peers and naming within a peer group with mechanisms to create policies for creation and election, membership advertising and discovery of other peer groups and peer nodes, communication, security and content sharing ... enables control of the behavior and activity of peers in a peer group and can be used to implement ... access control, priority setting, traffic metering and bandwidth balancing"

The "establishment [of] mechanisms [for] advertising and discovery" ... and content sharing" as well as the "implement[ation] of access control" necessitates an analysis and identification of the data being communicated. The data being communicated includes source code thus Verbeke discloses an analysis and identification of source code. While it is acknowledged as only very broadly teaching the limitation it is sufficient to serve as an "attachment point" for the teachings of Greenfield (and Kataoka).

Regarding the Greenfield reference the applicants argue:

"The recited element of claim 1 is "a source code indexer" not an "index" as stated by the office."

The creation of an index for source code (see e.g. Greenfield c 4, I 56 - c 5, I 8) necessarily discloses a source code indexer (i.e. something that creates an index for source code).

""Indexing" and "indexer" are distinctly different terms from the noun "dictionary" even when given a broad interpretation."

The examiner disagrees. Greenfield's dictionary (see e.g. c 5, II 3-8) interfaces to the created database (see e.g. c4, I 56-c5, I 2) and provides origination of and access to the identified source code elements, thus providing the functionality of an "indexer". .